

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GERALD R. CARROLL,)
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Movant,)
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v.) No. 4:21-CV-647-RLW
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UNITED STATES OF AMERICA,)
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Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. Movant filed a letter, dated June 2, 2021, in his closed criminal case, *U.S. v. Carroll*, Case No. 4:98-CR-351-RLW-1 (E.D. Mo.). The letter sought relief from judgment pursuant to *United States v. Booker*, 543 U.S. 2020 (2005). In the interests of justice, the Court construed the letter as a motion for relief from judgment, administratively terminated the motion, and opened the instant civil action under 28 U.S.C. § 2255. (ECF No. 1).

When a court on its own motion characterizes a filing as a § 2255 motion, the movant must be given the opportunity to either consent to the classification or withdraw the filing. *See Morales v. United States*, 304 F.3d 764, 767 (8th Cir. 2002).

Movant is warned that if he consents to the characterization of the instant filing as a motion under § 2255, this motion and any future § 2255 motion will be subject to the restrictions on filing second or successive motions. That is, movant will not be permitted to bring a second or successive § 2255 motion unless the United States Court of Appeals for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in § 2255(h)(1)-(2). Further, movant is warned that § 2255 motions are subject to a one-year limitations period. *See* 28 U.S.C. § 2255(f).

If movant consents to the characterization of the instant filing as a § 2255 motion, he must inform the Court of his decision, in writing, within thirty days of the date of this Order. Furthermore,

if movant consents to the characterization, he must also file an amended § 2255 motion on the Court-provided form within thirty days of the date of this Order. Under Eastern District of Missouri Local Rule 2.06(A), the Court may require a movant to file the action on a Court-provided form.

If movant opposes the characterization, or if movant fails to respond to this Order, then the Court will dismiss the action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that movant shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of the instant filing as a § 2255 motion.

IT IS FURTHER ORDERED that if movant consents to the characterization, then he must file an amended § 2255 motion on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if movant does not consent to the characterization of the instant filing as a § 2255 motion, or if movant fails to timely respond to this Order, then the Court will dismiss the action without prejudice.

IT IS FURTHER ORDERED that the Clerk shall mail to movant a copy of the Court's form motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

Ronnie L. White

RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 11th day of June, 2021.